

Kathleen Hartnett White, *Chairman*  
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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 19, 2007

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 MAR 19 PM 3:24  
CHIEF CLERKS OFFICE

**RE: HOUSTON INTERCONTINENTAL TRADE CENTER, L.P.  
TCEQ DOCKET NO. 2006-2247-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott A. Humphrey".

Scott A. Humphrey, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure



2006 MAR 19 PM 3: 24

**TCEQ DOCKET NO. 2006-2247-MWD**

CHIEF CLERK'S OFFICE

<b>IN THE MATTER OF THE</b>	§	<b>BEFORE THE TEXAS</b>
<b>APPLICATION BY HOUSTON</b>	§	<b>COMMISSION ON</b>
<b>INTERCONTINENTAL TRADE</b>	§	<b>ENVIRONMENTAL QUALITY</b>
<b>CENTER, L.P. FOR TPDES</b>	§	
<b>PERMIT NO. WQ0014671001</b>	§	

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO REQUESTS FOR HEARING**

**TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY:**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter and would respectfully show the following:

**I. INTRODUCTION**

Houston Intercontinental Trade Center, L.P. (HITC or Applicant) has applied to the TCEQ for a new Texas Pollutant Discharge Elimination System (TPDES) permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day (gpd) in the interim I phase, 250,000 gpd in the interim II phase and 500,000 gpd in the final phase. The proposed wastewater treatment facility will serve the Applicant. The facility will be located approximately 4,400 feet north of Farm-to-Market Road 1488 and 10,100 feet west of Interstate Highway 45 in southwest Montgomery County, Texas.

The HITC Wastewater Treatment Facility would be an activated sludge process plant operated in the complete mix mode. Treatment units in the interim I phase will include an aeration basin, final clarifier, sludge digester and a chlorine contact chamber. Treatment units in the interim II phase will include two aeration basins, one final clarifier, two aerobic digesters and

one chlorine contact chamber. Treatment units in the final phase will include four aeration basins, two final clarifiers, four aerobic digesters and one chlorine contact chamber. The facility has not been constructed. The draft permit would authorize the disposal of sludge at a TCEQ registered or permitted land application site, commercial land application or co-disposal landfill.

The effluent limitations in the interim I and interim II phases of the draft permit, based on a 30-day average, are 10mg/l five-day Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>), 15 mg/l Total Suspended Solids (TSS), 3mg/l Ammonia-Nitrogen (NH<sub>3</sub>-N) and 6.0 mg/l minimum dissolved oxygen (DO). The effluent would contain a chlorine residual of at least 1.0 mg/l and would not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The effluent limitations in the final phase of the draft permit, based on a 30-day average, are 7 mg/l CBOD<sub>5</sub>, 15 mg/l NH<sub>3</sub>-N and 6.0 mg/l minimum DO. The effluent would contain a chlorine residual of at least 1.0 mg/l and would not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent will be discharged to a drainage channel and then to West Fork San Jacinto River in Segment No. 1004 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for the drainage channel. The designated uses for Segment No. 1004 are high aquatic life uses, public water supply and contact recreation. Segment No. 1004 is currently listed on the State's inventory of impaired and threatened waters (the 2004 § 303(d) list). The Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit. The Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in West

Fork San Jacinto River. According to the ED, the effluent limitations in the draft permit will maintain and protect the existing instream uses.

HITC submitted its application to the TCEQ on December 9, 2005, and the ED declared it administratively complete on January 25, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on February 3, 2006 in *The Courier*. The Notice of Application and Preliminary Decision for a Water Quality Permit was published on June 9, 2006 in *The Courier*.

In response to the notices concerning this permit application, the TCEQ received requests for a contested case hearing from the following: Lewis and Sharon Walker; James A. Ryan; Robert Morgan and Kara Lea Kern, MD; H.D Lowery; John E. Lester and Gayle E. Mitchel; Daniel M. Kaldor; Charlie Kaiser & family; Gary and Mercedes Jones; Bob Henderson; Douglas and Deeanna Heermann; Christian and Kristina Hansen; Matthew J. and Margie A. Godar; Patricia A. Finch; Sheila and Morris Dubs; Jeanne Bonnette; Dick and Gay Baskin; and Russell Banning. Except for the requests submitted by the Walkers, Mr. Henderson and Ms. Finch, OPIC recommends granting the requests for contested case hearing and referring this matter to the State Office of Administrative Hearings (SOAH).

## **II. REQUIREMENTS OF APPLICABLE LAW**

### **A. Requests for Contested Case Hearing**

This application was declared administratively complete on January 25, 2006. Because the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Texas Water Code § 5.556 added by Acts 1999, 76<sup>th</sup> Leg., ch 1350

(commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application. 30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), an affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restriction or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

The Commission shall grant an affected person's timely filed hearing request if: (1) the

request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the commission's decision on the application. 30 TAC §55.211(c).

Accordingly, pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

### **III. DISCUSSION**

#### **A. Determination of Affected Person Status**

##### **1. James Ryan**

Mr. Ryan notes that the plant's location near the south side of the Carriage Hills property would place the plant behind his home, less than a few hundred yards from his property line. He has expressed concerns about the prevailing winds from the south as well as the potential noise and how they will impact his home, quality of life and property values and his family's general health.

OPIC infers that his concerns regarding the prevailing winds pertain to potential nuisance odors, which is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because

of the proximity of the requestor's property to the proposed plant, the regulated activity will likely impact the health and property of Mr. Ryan. OPIC recommends finding that Mr. Ryan is an affected person entitled to a contested case hearing.

**2. Robert Morgan and Kara Lea Kern, MD**

Mr. Morgan and Dr. Kern point out that the proposed plant would be located approximately 2,000 feet from their house. The discharge ditch is planned to be located between the proposed plant and the homes along Cobblecreek Drive, within 300 feet of the property lines of their neighbors across the street. They are also concerned about the prevailing winds and the potential nuisance odors and the impact on property values.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestors' property to the proposed plant, the regulated activity will likely impact the health and property of Mr. Morgan and Dr. Kern. OPIC recommends finding that Mr. Morgan and Dr. Kern are affected person entitled to a contested case hearing.

**3. H.D. Lowery**

Mr. Lowery states the proposed location of the facility would adversely affect his property as it is only a few hundred feet east of his house. He expresses concerns about noise level, contamination of a nearby creek, possible odor and construction traffic.

Potential contamination of a nearby creek and nuisance odors are interests protected by the law under which this application will be considered. A reasonable relationship exists



between the interest claimed and the activity regulated. Because of the proximity of the requestor's property to the proposed plant, the regulated activity will likely impact the health and property of the Mr. Lowery. OPIC recommends finding that Mr. Lowery is an affected person entitle to a contested case hearing.

#### **4. John E. Lester and Gayle E. Mitchel**

Mr. Lester and Ms. Mitchel point out they would be within a mile and directly downwind from the proposed site. They express concerns about odor and property values.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestors' property to the proposes plant, the regulated activity will likely impact the health and property of Mr. Lester and Ms. Mitchel. OPIC recommends a finding that Mr. Lester and Ms. Mitchel are affected persons entitled to a contested case hearing.

#### **5. Daniel M. Kaldor**

Mr. Kaldor live approximately one and one quarter mile northeast of the proposed plant. He states that he previously lived nearby a wastewater plant but moved away at least in part because of the odor emanating from that plant.

OPIC infers that Mr. Kaldor is equally concerned about potential odors from this plant. Potential nuisance odor is an interest protected by the law under with this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the requestor's proximity to the proposed facility, the regulated activity

will likely impact the health and property Mr. Kaldor. OPIC recommends a finding that Mr. Kaldor is an affected person entitled to a contested case hearing.

#### **6. Charlie Kaiser & Family**

Mr. Kaiser states the proposed facility will be located next to his home. He expressed concern about noise, odor and negative impact on property values.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestor's property to the proposed plant, the regulated activity will likely impact the health and property Mr. Kaiser. OPIC recommends a finding that Mr. Kaiser is an affected person entitled to a contested case hearing.

#### **7. Gary and Mercedes Jones**

The Joneses state the proposed plant will be located approximately 1000 feet southeast of their house, and the proposed drainage ditch would be 300 feet southeast of their house. They express concerns about noise, odor and property values.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestors' property to the proposed plant, the regulated activity will likely impact the health and property of the Joneses. OPIC recommends a finding that the Joneses are affected persons entitled to a contested case hearing.

#### **8. Douglas and Deeanna Heermann**

The Heermanns note that the plant will be constructed just a few hundred yards to the

South of the Carriage Hills southern property line, almost directly behind their house. They express concern about the smell that will be drifting over Carriage Hills.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestors' property to the proposed plant, the regulated activity will likely impact the health and property of the Heermanns. OPIC recommends a finding that the Heermanns are affected persons entitled to a contested case hearing.

#### **9. Christian and Kristina Hansen**

The Hansens state that their southern property line borders the land which is to be developed. They express concern regarding noise, smell, potential runoff and property values.

Potential runoff and nuisance odor are interests protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestors' property to the proposed plant, the regulated activity will likely impact the health and property of the Hansens. OPIC recommends a finding that the Hansens are affected persons entitled to a contested case hearing.

#### **10. Matthew J. and Margie A. Godar**

The Godars' residence is located northwest of the proposed site, approximately 450 feet from the drainage canal and 1,250 feet from the plant. They express concerns regarding smell, noise and contamination from runoff.

Nuisance odors and contamination from runoff are interests protected by the law under

which this application will be considered. A reasonable relationship exists between the interests claimed and the activity regulated. Because of the proximity of the requestors' property to the proposed plant, the regulated activity will likely impact the health and property of the Godars. OPIC recommends a finding that the Godars are affected persons entitled to a contested case hearing.

#### **11. Sheila and Morris Dubs**

The Dubs live approximately 2 miles from the proposed treatment plant, and they use the common area of the Carriage Hills subdivision for such recreational uses as tennis, basketball and picnics. The common area is less than one mile from the proposed site, and they are concerned about odor and noise.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestors' property to the proposed plant, the regulated activity will likely impact the health and property of the Dubs. OPIC recommends a finding that the Dubs are affected persons entitled to a contested case hearing.

#### **12. Jeanne Bonnette**

Ms. Bonnette lives about 1/3 mile from the proposed wastewater facility. She is concerned about potential nuisance odors.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestor's property to the proposed plant, the

regulated activity will likely impact the health and property of Ms. Bonette. OPIC recommends a finding that Ms. Bonnette is an affected person entitled to a contested case hearing.

### **13. Dick and Gay Baskin**

The Baskins live less than ½ mile from the proposed facility. They express concerns about potential noise and odor.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestors' property to the proposed plant, the regulated activity will likely impact the health and property of the Baskins. OPIC recommends a finding that the Baskins are affected persons entitled to a contested case hearing.

### **14. Russell Banning**

Mr. Banning lives approximately 1,000 feet northwest of the proposed facility. He expresses concerns regarding property value, odors and noise.

Potential nuisance odor is an interest protected by the law under which this application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. Because of the proximity of the requestor's property to the proposed plant, the regulated activity will likely impact the health and property of Mr. Banning. OPIC recommends a finding that Mr. Banning is an affected person entitled to a contested case hearing.

### **15. Lewis and Sharon Walker**

The Walkers live within a few hundred feet of the proposed site for the facility. They express concerns about reduction in their property values.

Property values is not an issue that the Commission will consider in determining whether the proposed application should be granted or denied. Since the Walkers did not identify an interest under which this permit application will be adjudicated, OPIC cannot recommend granting their request for a contested case hearing.

#### **16. Bob Henderson**

Mr. Henderson is concerned about how the proposed facility will affect his property values. He is also concerned about noise, odor and traffic.

Mr. Henderson has not described where his property is located in relationship to the proposed facility. Without that information, OPIC cannot at this time recommend a finding that Mr. Henderson is an affected person. If Mr. Henderson supplements his hearing request with information regarding where his property is located in relationship to the proposed facility, OPIC will reconsider its recommendation.

#### **17. Patricia Finch**

Ms. Finch states her home is adjacent to the property, and she is concerned about the placement of the wastewater treatment plant. She states the map attached to the application is approximately 25 years old and she would like to see a more current map indicating the layout of the development (streets/homes) of the new subdivision and the placement of the wastewater treatment plant in relationship to the development and Carriage Hills subdivision.

OPIC infers that Ms. Finch's primary concern is the location of the plant. The TCEQ has no jurisdiction over zoning issues. Furthermore, she has not raised any issues suggesting the proposed permit does not comply with TCEQ siting requirements. In the absence of such an

issue, OPIC cannot recommend granting Ms. Finch's request for a contested case hearing.

**B. Issues Raised in the Hearing Requests**

The issues raised in the hearing requests include: potential nuisance odors; potential contamination from runoff; potential decline in property values; potential increase in noise; and potential increase in traffic.

**1. Disputed Issues**

Each of these issues is disputed. With respect to nuisance odors, the ED states that domestic wastewater treatment facilities must meet the abatement and control of nuisance odors according to 30 TAC § 309.13(e). The draft permit requires the Applicant to meet the requirement by obtaining legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the Applicant.

Regarding contamination from runoff, the ED states that purpose of the Texas Surface Water Quality Standards set out in 30 TAC Chapter 307 is to protect aquatic life, human health and wildlife along the discharge route. The ED states the effluent limitations will maintain and protect the existing instream uses. Also, the draft permit specifies that treated effluent will be disinfected through means of chlorination to remove harmful bacteria in the effluent. Finally, the draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding.

Regarding property values, noise and traffic, the ED notes that Chapter 26 of the Texas Water Code authorizes the Commission to issue permits for wastewater discharge facilities to maintain and protect water quality in the state. Potential effects on property values, noise and

traffic are not considered in the review of a wastewater permit application.

## **2. Issues of Fact**

Whether the proposed permit will cause potential nuisance odors is a question of fact appropriate for referral to SOAH. In addition, whether the proposed permit will cause contamination from runoff is an appropriate question of fact appropriate for referral to SOAH.

## **3. Issues Raised During the Comment Period**

Questions regarding potential nuisance odors and potential contamination from runoff were raised during the comment period.

## **4. Relevant and Material Issues**

The hearing requests raise issues relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(2)(A). The Commission must consider the requirements for the abatement and control of nuisance odors under 30 TAC § 309.13(e). Additionally, 30 TAC Chapter 309, Subchapter B sets out the process for reviewing an application for a domestic wastewater treatment facility. The purposes of the review: are to minimize possible contamination of ground and surface waters; to define the characteristics that make an area unsuitable or inappropriate for a wastewater treatment facility; to minimize the possibility of exposing the public to nuisance conditions; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable or inappropriate, unless the design, construction and operational features of the facility will mitigate the unsuitable site characteristics. However, issues regarding property values, noise and traffic are not relevant and material issues to the Commission's decision regarding this application.



## **5. Issues Recommended for Referral to Hearing**

In light of the requirements of 30 TAC §§ 50.115(b) and 55.211(b)(3)(A)(I), OPIC recommends that the Commission refer the following disputed issues of fact to SOAH: (1) Will the proposed permit result in potential nuisance odors?; and (2) Will the proposed permit result in contamination from runoff?

### **C. Maximum Expected Duration of Hearing**


Commission rule 30 TAC § 50.115(d) requires that any commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates the maximum expected duration of a hearing on this application would be six months from the first date of the preliminary hearing until the proposal for decision is issued.

## **IV. CONCLUSION**

Except for the Walkers, Bob Henderson and Patricia Finch, OPIC recommends granting the requests for a contested case hearing and referring the matter to SOAH with the issues set forth above. OPIC further recommends a maximum hearing duration of six months.


Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
Scott A. Humphrey  
Assistant Public Interest Counsel  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 19, 2007 the original and eleven true and correct copies of the Office of the Public Counsel's Response to the Requests for Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via facsimile transmission, and Inter-Agency Mail or by deposit in the U.S. Mail.

  
Scott A. Humphrey

**MAILING LIST**  
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**TCEQ DOCKET NO. 2006-2247-MWD**

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